

AMENDED IN ASSEMBLY MAY 22, 2003
AMENDED IN ASSEMBLY MARCH 17, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 14

Introduced by Assembly Member Jerome Horton

December 2, 2002

An act to add and repeal Article 60.3 (commencing with Section 20919) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, ~~relating to public contracts, and declaring the urgency thereof, to take effect immediately.~~ *relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 14, as amended, Jerome Horton. Public contracts: job order contracting.

Existing law provides various procedures, including competitive bidding, for different types of contracts involving state and local public entities, including school districts.

This bill would authorize, until December 1, 2007, job order contracting, as defined, by the Los Angeles Unified School District. ~~The bill,~~ *and would require the district, if it adopts this option,* to report to the Legislature regarding implementation of the job order contracting process *before that date.*

The bill would also state the intent of the Legislature to place a moratorium on the enactment of additional legislation authorizing school districts to use job order contracting until the Legislature has received that report.

This bill would make legislative findings and declarations regarding the bill's purposes and the necessity for a special statute.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 60.3 (commencing with Section 20919) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 60.3. Job Order Contracting

20919. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature, in enacting this article, to demonstrate an alternative and optional procedure for bidding of public works projects that is applicable only to the Los Angeles Unified School District.

(b) The Los Angeles Unified School District should be able to utilize cost effective options for the delivery of public works projects, in accordance with the national trend, which include authorizations in California, to allow public entities to utilize job order contracts as a project delivery method.

(c) The benefits of a job order contract project delivery system include accelerated completion of the projects, cost savings, and reduction of construction contracting complexity for the unified school district.

(d) The job order contracting approach should be used for the purposes of reducing project cost and expediting project completion.

(e) The Legislature is uncertain of the benefits and advantages of job order contracting for California school districts and therefore looks forward to the reports required by Section 20919.12 in order to fully and competently assess any further exemptions to the school contracting process.

20919.1. As used in this chapter:

1 (a) “Adjustment factor” means the job order contractor’s
2 competitively bid adjustment to the unified school district’s prices
3 as published in the catalog of construction tasks.

4 (b) “Catalog of construction tasks” means a book containing
5 specific construction tasks and the unit prices to install or demolish
6 that construction. The listed tasks shall be based on generally
7 accepted industry standards and information, where available, for
8 various items of work to be performed by the job order contractor.
9 The prices shall include the cost of materials, labor, and equipment
10 for performing the items of work. The prices shall not include
11 overhead and profit. All unit prices shall be developed using local
12 prevailing wages.

13 (c) “Indefinite quantity” means one or more of the
14 construction tasks listed in the catalog of construction tasks.

15 (d) “Job order” means a firm, fixed priced, lump-sum order
16 issued by the unified school district to a job order contractor for a
17 definite project scope of work as compiled from the catalog of
18 construction tasks to be performed pursuant to a job order contract.
19 No single job order may exceed one million dollars (\$1,000,000)
20 in value.

21 (e) “Job order contract” means a competitively bid contract
22 between the unified school district and a licensed, bonded, and
23 general liability insured contractor in which the contractor agrees
24 to a fixed period, fixed unit price, and indefinite quantity contract
25 that provides for the use of job orders for public works or
26 maintenance projects.

27 (f) “Job order contract technical specifications” means a book,
28 published by the unified school district, detailing the technical
29 specifications with regard to quality of materials and
30 workmanship to be used by the job order contractor in
31 accomplishing the tasks listed in the catalog of construction tasks.

32 (g) “Job order contractor” means a licensed, bonded, and
33 general liability insured contractor awarded a job order contract.

34 (h) “Offer to perform work” means the job order contractor’s
35 proposal for a specific job order.

36 (i) “Plans and specifications” means the catalog of
37 construction tasks and the job order contract technical
38 specifications. The scope of work to be performed with a job order
39 contract is potentially, but not necessarily, all the tasks published
40 in the catalog of construction tasks.

(j) “Project” means the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(k) “Project scope of work” means the document and related drawings, specifications, and writings referenced therein which together set forth the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(l) “Proposal” means the job order contractor prepared document quoting those construction tasks listed in the catalog of construction tasks that the job order contractor requires to complete the project scope of work, together with the appropriate quantities of each task. The pricing of each task shall be accomplished by multiplying the construction task unit price by the proposed quantity and the contractor’s competitively bid adjustment factor. The proposal shall also contain a schedule for the completion of a specific project scope of work as requested by the unified school district. The proposal may also contain approved drawings, work schedule, permits, or other documentation as the unified school district may require for a specific job order.

(m) “Public works project” has the same meaning as “public project,” as defined in Section 22002.

(n) “Subcontractor” means any person, firm, or corporation, other than the employees of the job order contractor, who is bonded and general liability insured and who contracts to furnish labor, or labor and materials, at the worksite or in connection with a job order, whether directly or indirectly on behalf of the job order contractor.

(o) “Unified school district” means the Los Angeles Unified School District.

20919.2. Nothing in this article or in this code shall prohibit the unified school district from utilizing job order contracting, as ~~an alternative to the procedures set forth in Article 1 (commencing with Section 10500) of Chapter 2.1, and Article 1 (commencing with Section 10700) of Chapter 2.5 of Part 2.~~ *an alternative to any contracting procedures that the unified school district is otherwise authorized or required by law to use.*

20919.3. The unified school district shall establish and enforce for job order contracts a labor compliance program

1 containing the requirements outlined in Section 1771.5 of the
2 Labor Code, or it shall contract with a third party to operate a labor
3 compliance program containing the requirements outlined in that
4 provision. This requirement does not apply to any project where
5 the unified school district or the job order contractor has entered
6 into any collective bargaining agreement or agreements that bind
7 all of the contractors performing work on the projects.

8 20919.4. Bidding for job order contracts shall progress as
9 follows:

10 (a) (1) The unified school district shall prepare a set of
11 documents for each job order contract. The documents shall
12 include a catalog of construction tasks and preestablished unit
13 prices, job order contract technical specifications, and any other
14 information deemed necessary to describe adequately the unified
15 school district's needs.

16 (2) Any architect, engineer, or consultant retained by the
17 unified school district to assist in the development of the job order
18 contract documents shall not be eligible to participate in the
19 preparation of a bid with any job order contractor.

20 (b) Based on the documents prepared under subdivision (a), the
21 unified school district shall prepare a request for bid that invites
22 prequalified job order contractors to submit competitive sealed
23 bids in the manner prescribed by the unified school district.

24 (1) The prequalified job order contractors shall, as determined
25 by the unified school district, bid one or more adjustment factors
26 to the unit prices listed in the catalog of construction tasks based
27 on the job order contract technical specifications. Awards shall be
28 made to the lowest responsible prequalified bidder.

29 (2) The unified school district may award multiple job order
30 contracts. Each job order contract shall be awarded to the lowest
31 responsive and responsible prequalified bidder.

32 (3) The request for bids may encourage the participation of
33 local construction firms and the use of local subcontractors.

34 (c) (1) The unified school district shall establish a procedure
35 to prequalify job order contractors using a standard questionnaire
36 prepared by the Department of Industrial Relations under Section
37 20101. This questionnaire shall require information including, but
38 not limited to, all of the following:

39 (A) If the job order contractor is a partnership, limited
40 partnership, or other association, a listing of all of the partners or

1 association members known at the time of bid submission who will
2 participate in the job order contract.

3 (B) Evidence that the members of the job order contractor have
4 the capacity to complete projects of similar size, scope, or
5 complexity, and that proposed key personnel have sufficient
6 experience and training to competently manage the construction
7 of the project, as well as a financial statement that assures the
8 unified school district that the job order contractor has the capacity
9 to complete the project.

10 (C) The licenses, registration, and credentials required to
11 perform construction, including, but not limited to, information on
12 the revocation or suspension of any license, credential, or
13 registration.

14 (D) Evidence that establishes that the job order contractor has
15 the capacity to obtain all required payment and performance
16 bonding and liability insurance.

17 (E) Information concerning workers' compensation
18 experience history, worker safety programs, and apprenticeship
19 programs.

20 (i) An acceptable safety record. A contractor's safety record
21 shall be deemed acceptable if its experience modification rate for
22 the most recent three-year period is an average of 1.00 or less, and
23 its average total recordable injury/illness rate and average lost
24 work rate for the most recent three-year period do not exceed the
25 applicable statistical standards for its business category or if the
26 contractor is a party to an alternative dispute resolution system as
27 provided for in Section 3201.5 of the Labor Code.

28 (ii) Skilled labor force availability as determined by the
29 existence of an agreement with a registered apprenticeship
30 program, approved by the California Apprenticeship Council, that
31 has graduated apprentices in each of the preceding five years. This
32 graduation training for any craft that was first deemed by the
33 Department of Labor and the Department of Industrial Relations
34 to be an apprenticeable craft within the five years prior to the
35 effective date of this article.

36 (F) A full disclosure regarding all of the following that are
37 applicable:

38 (i) Any serious or willful violation of Part 1 (commencing with
39 Section 6300) of Division 5 of the Labor Code or the federal



Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the job order contractor.

(ii) Any debarment, disqualification, or removal from a federal, state, or local government public works project.

(iii) Any instance where the job order contractor, or its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(iv) Any instance where the job order contractor, or its owners, officers, or managing employees defaulted on a construction contract.

(v) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the job order contractor.

(vi) Any bankruptcy or receivership of any member of the job order contractor, including, but not limited to, information concerning any work completed by a surety.

(vii) Any settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the job order contractor during the five years preceding submission of a bid under this article, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(G) In the case of a partnership or any association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the job order contract.

(2) The information required under this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of

1 Title 1 of the Government Code) shall not be open to public
2 inspection.

3 20919.5. (a) The maximum total dollar amount that may be
4 awarded under a single job order contract shall not exceed five
5 million dollars (\$5,000,000) in the first term of the job order
6 contract and, if extended or renewed, ten million dollars
7 (\$10,000,000) over the maximum two terms of the job order
8 contract adjusted annually to reflect the percentage change in the
9 California Consumer Price Index.

10 (b) Job order contracts may be executed for an initial contract
11 term of no more than 12 months, with the option of extending or
12 renewing the job order contract for two 12-month periods. The
13 term of the job order contract shall be for the contract term or
14 whenever the maximum value of the contract is achieved,
15 whichever is less. All extensions or renewals shall be priced as
16 provided in the request for bids. The extension or renewal shall be
17 mutually agreed to by the unified school district and the job order
18 contractor.

19 (c) The unified school district may issue job orders to the job
20 order contractor that has been awarded the job order contract. The
21 job order shall be based on a project scope of work prepared by the
22 unified school district as well as a proposal from the job order
23 contractor who is awarded the job order contract. No single job
24 order may exceed one million dollars (\$1,000,000).

25 (d) It is unlawful to split or separate into smaller job orders any
26 project for the purpose of evading the cost limitation provisions of
27 this chapter.

28 (e) All work performed under the job order contract shall be
29 covered by a project stabilization agreement.

30 20919.6. (a) All work bid under the job order contract shall
31 comply with Chapter 4 (commencing with Section 4100) of Part
32 1 of Division 2 and is subject to all of the penalties and provisions
33 set forth in that chapter.

34 (b) For purposes of Article 60.3, if the primary job order
35 contractor chooses to use subcontractors, the primary job order
36 contractor is required to verify that the subcontractors possess the
37 appropriate licenses and credentials required to perform
38 construction.

39 (c) Notwithstanding subdivision (a), the primary job order
40 contractor may use subcontractors that are not listed at the time of



1 bid of the job order contract if the work to be performed under that
2 job order contract is less than ten thousand dollars (\$10,000).

3 (d) If the primary job order contractor chooses to use a
4 subcontractor that is not listed at the time of bid to perform work
5 on a job order contract that is less than ten thousand dollars
6 (\$10,000), both of the following apply:

7 (1) The unified school district shall provide public notice of the
8 availability of work to be subcontracted by trade. The public notice
9 shall include the scope of work; the project location; the name,
10 address, and the telephone number of the primary job order
11 contractor; and the closing date, time, and location for sealed bids
12 to be submitted.

13 (2) The primary job order contractor shall take sealed bids from
14 the subcontractors solicited for the proposal. These bids shall be
15 publicly opened at a prescribed time and place by the primary job
16 order contractor. After the bids are opened, they shall be forwarded
17 to the unified school district which shall maintain them as public
18 records.

19 (e) If the unified school district determines that there has been
20 bid shopping by the primary job order contractor, the unified
21 school district shall terminate the job order contract. If the unified
22 school district determines that a job order contractor has violated
23 Chapter 4 (commencing with Section 4100) of Part 1 of Division
24 2, the unified school district may declare the contractor ineligible
25 to bid on job order contracts for a period of time to be determined
26 by the unified school district.

27 20919.7. (a) A job order contract shall set forth in the general
28 conditions of the job order contract the party or parties responsible
29 for seeing that the provisions of Article 2 (commencing with
30 Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor
31 Code are complied with.

32 (b) For purposes of job order contracting, prevailing wages
33 when required to be paid shall apply to all work ordered under the
34 job order contract regardless of thresholds set forth in Section
35 1771.5 of the Labor Code.

36 (c) The job order contractor shall pay the prevailing wage in
37 effect at the time the job order is issued by the unified school
38 district and all increases as published by the Department of
39 Industrial Relations for the term of the job order contract,

1 including all overtime, holiday, and shift provisions published by
2 the Department of Industrial Relations.

3 (d) The unified school district shall designate one individual
4 within its labor compliance office to act as a monitor to inspect job
5 sites for labor compliance violations at the request of the
6 designated labor representative.

7 20919.8. A willful violation of Section 20919.6 occurs when
8 the job order contractor or subcontractor knew or reasonably
9 should have known of his or her obligations under the public works
10 law and deliberately fails or refuses to comply with its provisions.
11 The unified school district using job order contracting shall
12 publish and distribute to the Labor Commission a list of all job
13 order contractors or subcontractors who violate this provision and
14 the unified school district shall not award a job order contract or
15 any future job orders under an existing job order contract to any
16 contractor or subcontractor who violates this provision during the
17 effective period of debarment of the contractor or subcontractor.

18 20919.9. For purposes of employment of apprentices on job
19 order contracts, *when the individual job order involves more than*
20 *thirty thousand dollars (\$30,000) or 20 working days*, all general
21 contractors or subcontractors shall ~~comply with the provisions of~~
22 ~~the following subdivisions when the individual job order involves~~
23 ~~more than thirty thousand dollars (\$30,000) or 20 working days.~~
24 *comply with the following:*

25 (a) Prior to commencing work on an individual job order, every
26 contractor shall submit job order award information to an
27 applicable apprenticeship program that can supply apprentices to
28 the site of the job order. The information submitted shall include
29 an estimate of the journeyman hours to be performed under the
30 contract, the number of apprenticeships proposed to be employed,
31 and the approximate dates the apprentices would be employed. A
32 copy of this information shall also be submitted to the awarding
33 agency if requested by the awarding agency.

34 (b) The ratio of work performed by apprentices to ~~journeyman~~
35 *journeymen* employed in a particular craft or trade on the job order
36 may be no higher than the ratio stipulated in the apprenticeship
37 standard under which the apprenticeship program operates where
38 the job order contractor agrees to be bound by those standards but,
39 except as otherwise provided in Section 1777.5 of the Labor Code,



1 in no case shall the ratio be less than one hour of apprenticeship
2 work for every five hours of journeyman work.

3 (c) Every apprentice employed under the job order contract
4 shall be paid the prevailing rate of per diem wages for apprentices
5 in the trade to which he or she is registered and shall be employed
6 only at the work of the craft or trade to which he or she is registered.

7 (d) Every apprentice employed under the job order contract
8 shall be hired from the local joint labor management
9 apprenticeship committee that has jurisdiction in the geographic
10 area of the project.

11 20919.10. A job order contractor or subcontractor that
12 knowingly violates the provisions involving employment of
13 apprentices shall forfeit as a civil penalty an amount not exceeding
14 one hundred dollars (\$100) for each full calendar day of
15 noncompliance. The amount of this penalty shall be based on
16 consideration of whether the violation was a good faith mistake
17 due to inadvertence. A contractor or subcontractor that knowingly
18 commits a second or subsequent violation of the provisions
19 involving employment of apprentices within a three-year period
20 where the noncompliance results in apprenticeship training not
21 being provided as required, shall forfeit as a civil penalty a sum of
22 not more than three hundred dollars (\$300) for each full calendar
23 day of noncompliance and shall not be awarded any further job
24 orders under the job order contract and shall be precluded for a
25 period of one year from bidding on any future job order contracts.

26 20919.11. In order to prevent fraud, waste, and abuse, the
27 unified school district adopting job order contracting shall do all
28 of the following:

29 (a) Prepare for each individual job order developed under a job
30 order contract an independent unified school district estimate. The
31 estimate will be prepared prior to the receipt of the contractor's
32 offer to perform work and will be compared to the contractor's
33 proposed price to determine the reasonableness of that price before
34 issuance of any job order. The basis for any adjustments to the
35 unified school district estimate is to be documented. In the event
36 that the contractor's proposal for a given job order is found to be
37 unreasonable, not cost effective, or undesirable, the unified school
38 district is under no obligation to issue the job order to the job order
39 contractor, and may instead utilize any other available
40 procurement procedures.

1 (b) The unified school district may not issue a job order until
2 the job order has been reviewed and approved by at least two levels
3 of management.

4 (c) Once a job order has been issued, all documents pertaining
5 to preparation and approval of the job order, including the
6 independent unified school district estimate, shall be available for
7 public review.

8 20919.12. If the unified school district adopts the job order
9 contracting process, the unified school district shall submit to the
10 Senate and Assembly Committees on Business and Professions,
11 and the Senate and Assembly Committees on Education, before
12 December 1, 2007, a report containing a description of each job
13 order contract procured, and the work under each contract
14 completed on or before November 1, 2007. The report shall
15 include, but shall not be limited to, all of the following
16 information:

17 (a) A listing of all projects completed under each job order
18 contract.

19 (b) The job order contractor that was awarded each contract.

20 (c) The estimated and actual project costs.

21 (d) The estimated procurement time savings.

22 (e) A description of any written protests concerning any aspect
23 of the solicitation, bid, proposal, or award of the job order contract,
24 including, but not limited to, the resolution of the protests.

25 (f) An assessment of the prequalification process and criteria.

26 (g) A description of the labor force compliance program
27 required under Section 20919.4, and an assessment of the impact
28 on a project where compliance with that program is required.

29 (h) Recommendations regarding the most appropriate uses for
30 the job order contract process.

31 20919.13. If, after 30 days from receipt of the invoice, a
32 contract has not been paid, the contractor shall contact the
33 designated unified school district employee to resolve payment. If
34 the contact with the unified school district's designee does not
35 provide full payment within three business days, the contractor
36 may request a special convening of the payment resolution
37 committee.

38 (a) The payment resolution committee shall be composed of a
39 representative of the contractor, a representative from labor, a
40 representative designated by the director of facilities within the

1 unified school district, and a representative designated by the
2 director of facilities support services within the unified school
3 district.

4 (b) After convening, the committee shall make its
5 recommendation of payment within three business days.

6 20919.14. *It is the intent of the Legislature that a moratorium*
7 *be placed on the enactment of any additional legislation*
8 *authorizing school districts to use job order contracting until the*
9 *Legislature has received the reports required by Section 20919.12.*

10 20919.15. This article shall remain in effect only until
11 December 1, 2007, and as of that date is repealed, unless a later
12 enacted statute, that is enacted before December 1, 2007, deletes
13 or extends that date.

14 SEC. 2. The Legislature finds and declares that a special law
15 is necessary and that a general law cannot be made applicable
16 within the meaning of Section 16 of Article IV of the California
17 Constitution as a result of the unique fiscal and infrastructure
18 difficulties being suffered by the Los Angeles Unified School
19 District.

20 ~~SEC. 3. This act is an urgency statute necessary for the~~
21 ~~immediate preservation of the public peace, health, or safety~~
22 ~~within the meaning of Article IV of the Constitution and shall go~~
23 ~~into immediate effect. The facts constituting the necessity are:~~

24 ~~In order to facilitate the making of necessary repairs by the Los~~
25 ~~Angeles Unified School District as soon as possible, it is necessary~~
26 ~~that this act take effect immediately.~~

